

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1296

97TH GENERAL ASSEMBLY

Reported from the Committee on Ways and Means, April 30, 2014, with recommendation that the Senate Committee Substitute do pass.

5085S.03C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 143.451 and 144.080, RSMo, and to enact in lieu thereof two new sections relating to taxes based on sales, with an existing penalty provision.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 143.451 and 144.080, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 143.451 and 144.080, to
3 read as follows:

143.451. 1. Missouri taxable income of a corporation shall include all
2 income derived from sources within this state.

3 2. A corporation described in subdivision (1) of subsection 1 of section
4 143.441 shall include in its Missouri taxable income all income from sources
5 within this state, including that from the transaction of business in this state and
6 that from the transaction of business partly done in this state and partly done in
7 another state or states. However:

8 (1) Where income results from a transaction partially in this state and
9 partially in another state or states, and income and deductions of the portion in
10 the state cannot be segregated, then such portions of income and deductions shall
11 be allocated in this state and the other state or states as will distribute to this
12 state a portion based upon the portion of the transaction in this state and the
13 portion in such other state or states.

14 (2) The taxpayer may elect to compute the portion of income from all
15 sources in this state in the following manner, or the manner set forth in
16 subdivision (3) of this subsection:

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 (a) The income from all sources shall be determined as provided,
18 excluding therefrom the figures for the operation of any bridge connecting this
19 state with another state.

20 (b) The amount of sales which are transactions wholly in this state shall
21 be added to one-half of the amount of sales which are transactions partly within
22 this state and partly without this state, and the amount thus obtained shall be
23 divided by the total sales or in cases where sales do not express the volume of
24 business, the amount of business transacted wholly in this state shall be added
25 to one-half of the amount of business transacted partly in this state and partly
26 outside this state and the amount thus obtained shall be divided by the total
27 amount of business transacted, and the net income shall be multiplied by the
28 fraction thus obtained, to determine the proportion of income to be used to arrive
29 at the amount of Missouri taxable income. The investment or reinvestment of its
30 own funds, or sale of any such investment or reinvestment, shall not be
31 considered as sales or other business transacted for the determination of said
32 fraction.

33 (c) For the purposes of this subdivision, a transaction involving the sale
34 of tangible property is:

35 a. "Wholly in this state" if both the seller's shipping point and the
36 purchaser's destination point are in this state;

37 b. "Partly within this state and partly without this state" if the seller's
38 shipping point is in this state and the purchaser's destination point is outside
39 this state, or the seller's shipping point is outside this state and the purchaser's
40 destination point is in this state;

41 c. Not "wholly in this state" or not "partly within this state and partly
42 without this state" only if both the seller's shipping point and the purchaser's
43 destination point are outside this state.

44 (d) For purposes of this subdivision:

45 a. The purchaser's destination point shall be determined without regard
46 to the FOB point or other conditions of the sale; and

47 b. The seller's shipping point is determined without regard to the location
48 of the seller's principle office or place of business.

49 (3) The taxpayer may elect to compute the portion of income from all
50 sources in this state in the following manner:

51 (a) The income from all sources shall be determined as provided,
52 excluding therefrom the figures for the operation of any bridge connecting this

53 state with another state;

54 (b) The amount of sales which are transactions in this state shall be
55 divided by the total sales, and the net income shall be multiplied by the fraction
56 thus obtained, to determine the proportion of income to be used to arrive at the
57 amount of Missouri taxable income. The investment or reinvestment of its own
58 funds, or sale of any such investment or reinvestment, shall not be considered as
59 sales or other business transacted for the determination of said fraction;

60 (c) For the purposes of this subdivision, a transaction involving the sale
61 of tangible property is:

62 a. "In this state" if the purchaser's destination point is in this state;

63 b. Not "in this state" if the purchaser's destination point is outside this
64 state;

65 (d) For purposes of this subdivision, the purchaser's destination point
66 shall be determined without regard to the FOB point or other conditions of the
67 sale and shall not be in this state if the purchaser received the tangible personal
68 property from the seller in this state for delivery to the purchaser's location
69 outside this state;

70 **(e) For the purposes of this subdivision, a transaction involving**
71 **the sale other than the sale of tangible property is "in this state" if the**
72 **taxpayer's market for the sales is in this state. The taxpayer's market**
73 **for sales is in this state:**

74 a. **In the case of sale, rental, lease, or license of real property, if**
75 **and to the extent the property is located in this state;**

76 b. **In the case of rental, lease, or license of tangible personal**
77 **property, if and to the extent the property is located in this state;**

78 c. **In the case of sale of a service, if and to the extent the benefit**
79 **of the service is delivered to a purchaser location in this state; and**

80 d. **In the case of intangible property:**

81 **(i) That is rented, leased, or licensed, if and to the extent the**
82 **property is used in this state by the rentee, lessee, or licensee, provided**
83 **that intangible property utilized in marketing a good or service to a**
84 **consumer is "used in this state" if that good or service is purchased by**
85 **a consumer who is in this state. Franchise fees or royalties received**
86 **for the rent, lease, license, or use of a trade name, trademark, service**
87 **mark, or franchise system or provides a right to conduct business**
88 **activity in a specific geographic area are "used in this state" to the**

89 **extent the franchise location is in this state; and**

90 **(ii) That is sold, if and to the extent the property is used in this**
91 **state, provided that:**

92 **i. A contract right, government license, or similar intangible**
93 **property that authorizes the holder to conduct a business activity in a**
94 **specific geographic area is "used in this state" if the geographic area**
95 **includes all or part of this state;**

96 **ii. Receipts from intangible property sales that are contingent on**
97 **the productivity, use, or disposition of the intangible property shall be**
98 **treated as receipts from the rental, lease, or licensing of such**
99 **intangible property under item (i) of this subparagraph; and**

100 **iii. All other receipts from a sales of intangible property shall**
101 **be excluded from the numerator and denominator of the sales factor;**

102 **(f) If the state or states of assignment under paragraph (e) of this**
103 **subdivision cannot be determined, the state or states of assignment**
104 **shall be reasonably approximated;**

105 **(g) If the state of assignment cannot be determined under**
106 **paragraph (e) of this subdivision or reasonably approximated under**
107 **paragraph (f) of this subdivision, such sales shall be excluded from the**
108 **denominator of the sales factor;**

109 **(h) The director may prescribe such rules and regulations as**
110 **necessary or appropriate to carry out the purposes of this section.**

111 **(4) For purposes of this subsection, the following words shall, unless the**
112 **context otherwise requires, have the following meaning:**

113 **(a) "Administration services" include, but are not limited to, clerical, fund**
114 **or shareholder accounting, participant record keeping, transfer agency,**
115 **bookkeeping, data processing, custodial, internal auditing, legal and tax services**
116 **performed for an investment company;**

117 **(b) "Affiliate", the meaning as set forth in 15 U.S.C. Section 80a-2(a)(3)(C),**
118 **as may be amended from time to time;**

119 **(c) "Distribution services" include, but are not limited to, the services of**
120 **advertising, servicing, marketing, underwriting or selling shares of an investment**
121 **company, but, in the case of advertising, servicing or marketing shares, only**
122 **where such service is performed by a person who is, or in the case of a closed end**
123 **company, was, either engaged in the services of underwriting or selling**
124 **investment company shares or affiliated with a person that is engaged in the**

125 service of underwriting or selling investment company shares. In the case of an
126 open end company, such service of underwriting or selling shares must be
127 performed pursuant to a contract entered into pursuant to 15 U.S.C. Section
128 80a-15(b), as from time to time amended;

129 (d) "Investment company", any person registered under the federal
130 Investment Company Act of 1940, as amended from time to time, (the act) or a
131 company which would be required to register as an investment company under
132 the act except that such person is exempt to such registration pursuant to Section
133 80a-3(c)(1) of the act;

134 (e) "Investment funds service corporation" includes any corporation or S
135 corporation doing business in the state which derives more than fifty percent of
136 its gross income in the ordinary course of business from the provision directly or
137 indirectly of management, distribution or administration services to or on behalf
138 of an investment company or from trustees, sponsors and participants of employee
139 benefit plans which have accounts in an investment company. An investment
140 funds service corporation shall include any corporation or S corporation providing
141 management services as an investment advisory firm registered under Section
142 203 of the Investment Advisors Act of 1940, as amended from time to time,
143 regardless of the percentage of gross revenues consisting of fees from
144 management services provided to or on behalf of an investment company;

145 (f) "Management services" include but are not limited to, the rendering of
146 investment advice directly or indirectly to an investment company making
147 determinations as to when sales and purchases of securities are to be made on
148 behalf of the investment company, or the selling or purchasing of securities
149 constituting assets of an investment company, and related activities, but only
150 where such activity or activities are performed:

151 a. Pursuant to a contract with the investment company entered into
152 pursuant to 15 U.S.C. Section 80a-15(a), as from time to time amended;

153 b. For a person that has entered into such contract with the investment
154 company; or

155 c. For a person that is affiliated with a person that has entered into such
156 contract with an investment company;

157 (g) "Qualifying sales", gross income derived from the provision directly or
158 indirectly of management, distribution or administration services to or on behalf
159 of an investment company or from trustees, sponsors and participants of employee
160 benefit plans which have accounts in an investment company. For purposes of

161 this section, "gross income" is defined as that amount of income earned from
162 qualifying sources without deduction of expenses related to the generation of such
163 income;

164 (h) "Residence", presumptively the fund shareholder's mailing address on
165 the records of the investment company. If, however, the investment company or
166 the investment funds service corporation has actual knowledge that the fund
167 shareholder's primary residence or principal place of business is different than
168 the fund shareholder's mailing address such presumption shall not control. To
169 the extent an investment funds service corporation does not have access to the
170 records of the investment company, the investment funds service corporation may
171 employ reasonable methods to determine the investment company fund
172 shareholder's residence.

173 (5) Notwithstanding other provisions of law to the contrary, qualifying
174 sales of an investment funds service corporation, or S corporation, shall be
175 considered wholly in this state only to the extent that the fund shareholders of
176 the investment companies, to which the investment funds service corporation, or
177 S corporation, provide services, are resided in this state. Wholly in this state
178 qualifying sales of an investment funds service corporation, or S corporation, shall
179 be determined as follows:

180 (a) By multiplying the investment funds service corporation's total dollar
181 amount of qualifying sales from services provided to each investment company by
182 a fraction, the numerator of which shall be the average of the number of shares
183 owned by the investment company's fund shareholders resided in this state
184 at the beginning of and at the end of the investment company's taxable year that
185 ends with or within the investment funds service corporation's taxable year, and
186 the denominator of which shall be the average of the number of shares owned by
187 the investment company's fund shareholders everywhere at the beginning of and
188 at the end of the investment company's taxable year that ends with or within the
189 investment funds service corporation's taxable year;

190 (b) A separate computation shall be made to determine the wholly in this
191 state qualifying sales from each investment company. The qualifying sales for
192 each investment company shall be multiplied by the respective percentage of each
193 fund, as calculated pursuant to paragraph (a) of this subdivision. The product of
194 this equation shall result in the wholly in this state qualifying sales. The
195 qualifying sales for each investment company which are not wholly in this state
196 will be considered wholly without this state;

197 (c) To the extent an investment funds service corporation has sales which
198 are not qualifying sales, those nonqualified sales shall be apportioned to this
199 state based on the methodology utilized by the investment funds service
200 corporation without regard to this subdivision.

201 3. Any corporation described in subdivision (1) of subsection 1 of section
202 143.441 organized in this state or granted a permit to operate in this state for the
203 transportation or care of passengers shall report its gross earnings within the
204 state on intrastate business and shall also report its gross earnings on all
205 interstate business done in this state which report shall be subject to inquiry for
206 the purpose of determining the amount of income to be included in Missouri
207 taxable income. The previous sentence shall not apply to a railroad.

208 4. A corporation described in subdivision (2) of subsection 1 of section
209 143.441 shall include in its Missouri taxable income all income arising from all
210 sources in this state and all income from each transportation service wholly
211 within this state, from each service where the only lines of such corporation used
212 are those in this state, and such proportion of revenue from each service where
213 the facilities of such corporation in this state and in another state or states are
214 used, as the mileage used over the lines of such corporation in the state shall
215 bear to the total mileage used over the lines of such corporation. The taxpayer
216 may elect to compute the portion of income from all sources within this state in
217 the following manner:

218 (1) The income from all sources shall be determined as provided;

219 (2) The amount of investment of such corporation on December thirty-first
220 of each year in this state in fixed transportation facilities, real estate and
221 improvements, plus the value on December thirty-first of each year of any fixed
222 transportation facilities, real estate and improvements in this state leased from
223 any other railroad shall be divided by the sum of the total amount of investment
224 of such corporation on December thirty-first of each year in fixed transportation
225 facilities, real estate and improvements, plus the value on December thirty-first
226 of each year, of any fixed transportation facilities, real estate and improvements
227 leased from any other railroad. Where any fixed transportation facilities, real
228 estate or improvements are leased by more than one railroad, such portion of the
229 value shall be used by each railroad as the rental paid by each shall bear to the
230 rental paid by all lessees. The income shall be multiplied by the fraction thus
231 obtained to determine the proportion to be used to arrive at the amount of
232 Missouri taxable income.

233 5. A corporation described in subdivision (3) of subsection 1 of section
234 143.441 shall include in its Missouri taxable income one-half of the net income
235 from the operation of a bridge between this and another state. If any such bridge
236 is owned or operated by a railroad corporation or corporations, or by a corporation
237 owning a railroad corporation using such bridge, then the figures for operation
238 of such bridge may be included in the return of such railroad or railroads; or if
239 such bridge is owned or operated by any other corporation which may now or
240 hereafter be required to file an income tax return, one-half of the income or loss
241 to such corporation from such bridge may be included in such return by adding
242 or subtracting same to or from another net income or loss shown by the return.

243 6. A corporation described in subdivision (4) of subsection 1 of section
244 143.441 shall include in its Missouri taxable income all income arising from all
245 sources within this state. Income shall include revenue from each telephonic or
246 telegraphic service rendered wholly within this state; from each service rendered
247 for which the only facilities of such corporation used are those in this state; and
248 from each service rendered over the facilities of such corporation in this state and
249 in other state or states, such proportion of such revenue as the mileage involved
250 in this state shall bear to the total mileage involved over the lines of said
251 company in all states. The taxpayer may elect to compute the portion of income
252 from all sources within this state in the following manner:

253 (1) The income from all sources shall be determined as provided;

254 (2) The amount of investment of such corporation on December thirty-first
255 of each year in this state in telephonic or telegraphic facilities, real estate and
256 improvements thereon, shall be divided by the amount of the total investment of
257 such corporation on December thirty-first of each year in telephonic or telegraphic
258 facilities, real estate and improvements. The income of the taxpayer shall be
259 multiplied by fraction thus obtained to determine the proportion to be used to
260 arrive at the amount of Missouri taxable income.

261 7. From the income determined in subsections 2, 3, 4, 5 and 6 of this
262 section to be from all sources within this state shall be deducted such of the
263 deductions for expenses in determining Missouri taxable income as were incurred
264 in this state to produce such income and all losses actually sustained in this state
265 in the business of the corporation.

266 8. If a corporation derives only part of its income from sources within
267 Missouri, its Missouri taxable income shall only reflect the effect of the following
268 listed deductions to the extent applicable to Missouri. The deductions are: (a)

269 its deduction for federal income taxes pursuant to section 143.171, and (b) the
270 effect on Missouri taxable income of the deduction for net operating loss allowed
271 by Section 172 of the Internal Revenue Code. The extent applicable to Missouri
272 shall be determined by multiplying the amount that would otherwise affect
273 Missouri taxable income by the ratio for the year of the Missouri taxable income
274 of the corporation for the year divided by the Missouri taxable income for the year
275 as though the corporation had derived all of its income from sources within
276 Missouri. For the purpose of the preceding sentence, Missouri taxable income
277 shall not reflect the listed deductions.

278 9. Any investment funds service corporation organized as a corporation
279 or S corporation which has any shareholders resided in this state shall be
280 subject to Missouri income tax as provided in this chapter.

144.080. 1. Every person receiving any payment or consideration upon
2 the sale of property or rendering of service, subject to the tax imposed by the
3 provisions of sections 144.010 to 144.525, is exercising the taxable privilege of
4 selling the property or rendering the service at retail and is subject to the tax
5 levied in section 144.020. The person shall be responsible not only for the
6 collection of the amount of the tax imposed on the sale or service to the extent
7 possible under the provisions of section 144.285, but shall, on or before the last
8 day of the month following each calendar quarterly period of three months, file
9 a return with the director of revenue showing the person's gross receipts and the
10 amount of tax levied in section 144.020 for the preceding quarter, and shall remit
11 to the director of revenue, with the return, the taxes levied in section 144.020,
12 except as provided in subsections 2 and 3 of this section. The director of revenue
13 may promulgate rules or regulations changing the filing and payment
14 requirements of sellers, but shall not require any seller to file and pay more
15 frequently than required in this section.

16 2. Where the aggregate amount levied and imposed upon a seller by
17 section 144.020 is in excess of two hundred and fifty dollars for either the first or
18 second month of a calendar quarter, the seller shall file a return and pay such
19 aggregate amount for such months to the director of revenue by the twentieth day
20 of the succeeding month.

21 3. Where the aggregate amount levied and imposed upon a seller by
22 section 144.020 is less than forty-five dollars in a calendar quarter, the director
23 of revenue shall by regulation permit the seller to file a return for a calendar
24 year. The return shall be filed and the taxes paid on or before January

25 thirty-first of the succeeding year.

26 4. The seller of any property or person rendering any service, subject to
27 the tax imposed by sections 144.010 to 144.525, shall collect the tax from the
28 purchaser of such property or the recipient of the service to the extent possible
29 under the provisions of section 144.285, but the seller's inability to collect any
30 part or all of the tax does not relieve the seller of the obligation to pay to the
31 state the tax imposed by section 144.020; except that the collection of the tax
32 imposed by sections 144.010 to 144.525 on motor vehicles and trailers shall be
33 made as provided in sections 144.070 and 144.440.

34 5. [It shall be unlawful for] Any person [to] **may** advertise or hold out or
35 state to the public or to any customer directly [or indirectly] that the tax or any
36 part thereof imposed by sections 144.010 to 144.525, and required to be collected
37 by the person, will be assumed or absorbed by the person, [or that it will not be
38 separately stated and added to the selling price of the] **provided that the**
39 **amount of tax assumed or absorbed shall be stated on any invoice or**
40 **receipt for the** property sold or service rendered[, or if added, that it or any
41 part thereof will be refunded]. Any person violating any of the provisions of this
42 section shall be guilty of a misdemeanor. **This subsection shall not apply to**
43 **any retailer prohibited from collecting and remitting sales tax under**
44 **section 66.630.**

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